

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re X.I., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

L.R.,

Defendant and Appellant.

E047720

(Super.Ct.No. RIJ113068)

OPINION

APPEAL from the Superior Court of Riverside County. Kenneth Fernandez,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and
Appellant

Pamela J. Walls, County Counsel, and Sophia H. Choi, Deputy County Counsel,
for Plaintiff and Respondent.

Lori A. Fields, under appointment by the Court of Appeal, for Minor.

L.R. (Mother) appeals the juvenile court's orders (1) denying her petition for a finding of changed circumstances (Welf. & Inst. Code, § 388);¹ and (2) terminating her parental rights to her son, X.I. (§ 366.26, subd. (b)(1)). Mother makes two contentions. First, Mother contends the juvenile court abused its discretion by denying her petition for a finding of changed circumstances, because Mother proved that (1) her circumstances had changed, and (2) it was in X.I.'s best interests to provide Mother with services. Second, Mother asserts that the juvenile court erred by terminating her parental rights to X.I. because substantial evidence supported a finding that Mother and X.I. have a beneficial relationship. Counsel for X.I. submitted a letter brief requesting that the juvenile court's orders be affirmed. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

A. Detention

In May 2008, staff at the Riverside County Regional Medical Center contacted the Riverside County Department of Public Social Services (the Department) regarding X.I., because Mother tested positive for amphetamine and marijuana following X.I.'s birth. Mother admitted abusing methamphetamine three days prior to X.I.'s birth, and admitted smoking marijuana every two weeks. X.I. tested positive for marijuana following his birth. Mother did not receive prenatal care during her pregnancy, and had few provisions for X.I., in part due to the fact that Mother did not know she was pregnant until she was "six to seven months" along.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Mother told the Department that she was employed as an assistant to mentally disabled teenagers. X.I.'s alleged father (Father) stated that he was employed by a group home for mentally disabled children. Father said that he was unaware of Mother's drug use; however, he had seen her drink alcohol.

Mother admitted that she had a history of abusing alcohol, but stated that she stopped drinking alcohol after she was arrested for driving under the influence with a blood alcohol level of 0.23 percent. The details of that incident are as follows: In October 2006, during a family reunification visit with her six-year old daughter, D.C., Mother was arrested for driving under the influence after causing an automobile collision, while D.C. was in the car.

In the instant case, the Department filed a section 300 petition against Mother, alleging that Mother (1) failed to protect X.I. (§ 300, subd. (b)); (2) left X.I. with no provision for support (§ 300, subd. (g)); and (3) abused X.I.'s sibling, D.C. (§ 300, subd. (j)). The juvenile court found probable cause existed to detain X.I., based upon Mother's failure to protect X.I. and her abuse of D.C.

B. Jurisdiction/Disposition

Mother's criminal history reflected that she (1) was convicted of two counts of driving under the influence in October and November 2006 (Veh. Code, § 23152, subd. (a)); (2) was convicted of two counts of driving with a blood-alcohol level of 0.08 percent or more in October and November 2006 (Veh. Code, § 23152, subd. (b)); and (3) had warrants issued for her arrest in January and February 2008 for driving under the influence (Veh. Code, § 23152, subds. (a) & (b)).

Father said that he was unwilling to take custody of X.I. because Father was married and did not want to tell his wife that he had a newborn son. The court ordered the Department to arrange for Father to take a paternity test. The paternity test revealed that Father was not X.I.'s biological father.

On June 5, 2008, the Department gave Mother a phone number to call for random drug testing. On June 20, 2008, the Department referred Mother to MFI Recovery, an inpatient drug and alcohol rehabilitation program. Mother was assessed the same day and MFI had beds available; however, MFI did not hear from Mother after the assessment.

The juvenile court found true the allegations that Mother (1) failed to protect X.I. (§ 300, subd. (b)), and (2) abused X.I.'s sibling, D.C. (§ 300, subd. (j)). The juvenile court ordered that X.I. continue to be removed from Mother's custody. The juvenile court further ordered that the Department not provide services to Mother because the court had previously terminated reunification services for D.C., and Mother had "not subsequently made a reasonable effort to treat the problems that led to [the] removal of [D.C.]," i.e., her alcoholism and drug use. (§ 361.5, subd. (b)(10).)

C. Post-permanency Review

Mother reported that she completed a drug and alcohol rehabilitation program on October 4, 2008, and that she was residing in a sober living home. Mother was searching for a job and attending parenting classes. X.I. was bonding with his caretaker, his maternal great-aunt. X.I. had been living with his great-aunt since he was 11 days

old. Mother visited X.I. for “a couple [of] hour[s]” while being supervised by X.I.’s great-aunt.

On December 2, 2008, Mother and the Department stipulated, in writing, that (1) adoption would be X.I.’s permanent plan; and (2) Mother had made minimal progress toward alleviating or mitigating the causes necessitating X.I.’s removal from her custody. The court agreed with the findings in the written stipulation.

D. Section 388 Petition

On November 25, 2008, Mother filed a JV-180 form, requesting to change a court order (§ 388).² Mother requested the court change its order regarding reunification services and visitation. Specifically, Mother requested the court direct the Department to offer her services, and that the court grant Mother more liberal visitation with X.I. Mother argued that circumstances had changed because she had completed a 90-day inpatient substance abuse treatment program, was attending 12-step meetings, participating in parenting classes, and visited with X.I.

The trial court found that the best interests of X.I. might be promoted by a changed order and ordered a hearing on the petition. On January 13, 2009, the juvenile court held the hearing on the petition. The court found that Mother’s circumstances were “changing but [did] not meet the [requirement] of a change in circumstances.”

² Although the dates listed may appear incorrect, they are, in fact, the correct dates. Mother filed a section 388 petition approximately one week prior to her stipulation that she had made minimal progress. We discuss the timing of these documents *post*.

Further, the court found that a change of the court's order would not be in X.I.'s best interests.

E. Termination of Parental Rights

X.I. thrived in his great-aunt's home. X.I.'s great-aunt was committed to adopting X.I. and meeting his needs. X.I. looked to his great-aunt for recognition and approval, even when Mother was present.

Mother extended her stay in the sober living home. Mother reported that she was working part-time selling Broadway tickets, but was not earning sufficient money to care for X.I. Mother visited X.I.; however, the visits were sporadic.

On January 13, 2009, the juvenile court found that it was likely X.I. would be adopted, and that adoption was in X.I.'s best interests. Further, the court found that it would not be detrimental to X.I. to terminate Mother's parental rights. The juvenile court ordered that Mother's parental rights, and the parental rights of all unknown fathers, be terminated. Additionally, the court ordered that adoption be X.I.'s permanent plan.

DISCUSSION

A. Section 388 Petition

Mother contends the juvenile court abused its discretion by denying her petition for a finding of changed circumstances, because Mother proved that (1) her circumstances had changed, and (2) it was in X.I.'s best interests to provide Mother with services. We disagree.

“Under section 388, a parent . . . may petition the court to change, modify or set aside a previous order on the grounds of changed circumstances or new evidence. (§ 388, subd. (a).) The petitioner has the burden to show a change of circumstances or new evidence and [that] the proposed modification is in the child’s best interests. [Citation.]” (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1228.) “In evaluating whether the petitioner has met his or her burden to show changed circumstances, the trial court should consider: ‘(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been.’ [Citation.]” (*Id.* at p. 1229.) “We review the grant or denial of a petition for modification under section 388 for an abuse of discretion.” (*Id.* at p. 1228.)

The problem which led to the dependency was Mother’s abuse of marijuana and methamphetamines while pregnant with X.I. The juvenile court found that X.I. had never lived with Mother, from which we infer the trial court found X.I. and Mother do not share as strong of a bond as X.I. and his great-aunt. Further, the juvenile court found that Mother was changing her circumstances in order to live a drug- and alcohol-free lifestyle, but that the change was still in process and not yet been completed. Accordingly, the court determined that the drug problem which led to the dependency had not yet been ameliorated.

The evidence supports the trial court’s conclusions. Mother was residing in a sober living house and had not yet proven that she was capable of living a drug- and

alcohol-free lifestyle when residing on her own. Moreover, on December 2, 2008, approximately one week after Mother filed her section 388 petition, Mother's attorney stipulated, in writing, that Mother had made "minimal" progress "toward alleviating or mitigating the causes necessitating placement" of X.I. Accordingly, the juvenile court's finding that Mother's circumstances had not sufficiently changed was supported by Mother's attorney's own written stipulation. Consequently, we conclude the trial court did not abuse its discretion when it found Mother's circumstances were not changed. Further, because the circumstances had not changed, it was not in X.I.'s best interests to have the court order changed. In sum, the trial court did not abuse its discretion by denying Mother's petition.

Mother asserts that the trial court erred because the change in her circumstances was sufficient to warrant increased visitation and services. Mother cites her completion of drug and alcohol treatment, participation in drug testing, and enrollment in parenting class as proof of her changed circumstances. This evidence is contradicted by the written stipulation of Mother's trial attorney that Mother's progress had been minimal. Based upon the stipulation and other evidence described *ante*, we cannot conclude that the trial court abused its discretion by denying Mother's section 388 petition.

B. Termination of Parental Rights

Mother asserts that the juvenile court erred by terminating her parental rights to X.I. because substantial evidence supported a finding that Mother and X.I. have a beneficial relationship. We disagree.

“Once the [juvenile] court determines the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1).

[Citations.] Section 366.26, subdivision (c)(1)(B)(i), provides an exception to termination of parental rights when ‘[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’”

(*In re S.B.* (2008) 164 Cal.App.4th 289, 297.)

“We determine whether there is substantial evidence to support the trial court’s ruling by reviewing the evidence most favorably to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court’s ruling. [Citation.] If the court’s ruling is supported by substantial evidence, the reviewing court must affirm” the juvenile court’s order. (*In re S.B.*, *supra*, 164 Cal.App.4th at pp. 297-298.)

Mother visited X.I.; however, the visits were sporadic. X.I. looked to his great-aunt for recognition and approval, even when Mother was present. X.I. has lived with his great-aunt since he was 11 days old; he has never lived with Mother. The foregoing evidence supports the finding that X.I. had a strong bond with his great-aunt, and that he did not have as strong of a bond with Mother. Accordingly, we conclude that substantial evidence supports the findings that (1) Mother did not maintain regular visitation and contact with X.I., and (2) X.I. would not benefit from continuing the relationship with Mother.

Mother argues that her visitation with X.I. was sporadic because Mother was focusing on her recovery, per X.I.’s great-aunt’s advice. Mother contends that the

courts have created “a sort of Catch 22,” in the sense that Mother was required to resolve her alcohol and drug dependency issues before being granted services, which kept her away from X.I.; however, she loses her parental rights to X.I. by not visiting X.I. Mother’s argument is unpersuasive for two reasons. First, the argument is unpersuasive because Mother essentially concedes that her visitation with X.I. was not regular. Second, Mother’s argument is unpersuasive because Mother was denied services in the instant case due to the previous termination of reunification services in the prior case involving D.C. Accordingly, the court gave Mother ample opportunity to address her drug and alcohol issues prior to X.I. being removed from her custody, e.g., when D.C. was removed from her care. Contrary to Mother’s position, the juvenile court did not make it impossible for her retain her parental rights to X.I. by placing her in a “Catch-22” situation, rather, it was Mother who chose to wait until X.I. had been removed from her care to focus on her rehabilitation.

Next, Mother asserts that X.I. would benefit from continuing a relationship with her, because X.I.’s great-aunt told Mother that X.I. would benefit from having a relationship with Mother. The courts generally “recognize that interaction between parent and child will usually confer some incidental benefit to the child.” (*In re B.D.*, *supra*, 159 Cal.App.4th at p. 1234.) Accordingly, we agree that X.I. would likely receive a slight benefit from a relationship with Mother; however, “[t]o overcome the statutory preference for adoption, the parent must prove he or she occupies a parental role in the child’s life resulting in a significant, positive emotional attachment of the child to the parent. [Citations.]” (*Ibid.*) Mother has not shown that the record contains

substantial evidence proving she occupies a parental role in X.I.'s life or that X.I. has a significant, positive emotional attachment to Mother. Consequently, we find Mother's argument unpersuasive.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ MILLER

J.

We concur:

/s/ RAMIREZ

P. J.

/s/ GAUT

J.